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5 March, 2015  
Our ref: MSM/0008720  
Your ref:

Dear Sir,

**Bicester to Oxford Transport and Works Act Order (TWA/10/APP/01) –  
Discharge of conditions in sections H to J**

We write with reference to your letter of 12 February 2015. Given the nature of that letter we respond in the same order.

We have still not received the overlay plans that should have been received some two weeks ago. Whilst your keenness to proceed is noted matters are likely to better proceed if you can provide accurate clear material.

**The Position Regarding Planning Permission and Conditions in Sections I and J**

It is far from clear how NR can, in substance, effect changes to the TWA Order scheme via Part 11 and 17 PD rights. If, as you state, you believe that this can be “strongly argued” then please present such strong argument. As matters stand we have no such argument so find ourselves unable to agree with the proposition advanced.

We should also note that is also far from clear that proceeding in such a manner is reconcilable with the EIA Directive. The project has been assessed on the basis as subjected to local public inquiry; not on the basis now presented.



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We should also note that the deemed permission has clearly been implemented. As such the conditions attached thereto are enforceable in accord with their own terms. By way of example; condition 19 precludes the commencement of development in any section until.... Development is defined by the deemed permission as the works authorised by the Order. It is not defined as works executed in reliance upon the Order. The proposition therefore that authorised works may be done under PD so that the conditions imposed by the Secretary of State need not be complied with appears to be wrong. As an aside, we would also comment that we consider that it is, to say the least, unfortunate that a body such as NR should seek to avoid conditions considered necessary by the Secretary of State in order for the project to proceed..

Whilst your comments as to article 6 of the Order are noted they appear to be misplaced. For development control purposes the more relevant control would be condition 2 of the deemed permission and the requirement that the development be carried out in accordance with specified approved drawings. Whilst it is hoped that the outstanding overlays will show whether or not this condition would be breached, unless and until those overdue overlays are provided, we are not able to conclude that your deviations would be lawful for planning purposes.

These proposed changes raise a further issue. There is material provided by NR in connection with condition approvals (e.g. condition 19) that is predicated upon the works being as per the plans; not anywhere within limits of deviation on plans. Your comment would appear (again using condition 19 as an example) to require that we will have to consider these matters on the basis that works could be anywhere within the limits of deviation. This could result in refusals where approvals might otherwise be forthcoming. It would also appear to call into question EIA Directive compliance insofar as likely significant impacts may change through translocation within limits of deviation.

In the circumstances we must request as a matter of urgency your confirmation that such deviation will not occur and your agreement to approvals under conditions that are based upon works being in a particular position being conditioned to ensure that the works are actually in the location assessed.

The issues raised above clearly impact upon the “concession” on offer. In any event the Council is a local planning authority required to exercise its statutory responsibilities in the normal lawful manner and in the public interest. It will not entertain some form of private transaction whereby it agrees not to properly exercise its statutory functions.

Although your assertion as to whether the currently proposed works in Section I are within the scope of the deemed planning permission is noted the Council will come to its own view once it has been provided with the still outstanding overlays. Similarly the Council will form its own view as to the adequacy of environmental information available to it on the receipt of subsequent applications in accordance with the EIA Regulations.

### Discharge of Planning Conditions in Section I

The requirements of the conditions are what they are. If you are of the view that such requirements are not sensible then that is a matter that should have been addressed via the local public inquiry. Neither NR nor this Council has the power to rewrite the deemed planning permission as anything other than what they actually say.

Re conditions 5, 7, 10, 11, 12 and 13; our comments as to the overlays and interpretation of the deemed planning permission are reiterated.

Re condition 6; the approval to which you refer only addresses approximately half of Section I. The wording of condition 6 requires approval of relevant details for the whole of the Section before development in that section commences. It therefore appears that what is proposed would be a breach of planning control.

Re condition 18; we simply note that the condition requires that "Development [the works authorised by the Order] shall be in accordance with the approved Code of Construction Practice.

Re condition 19; its provisions apply to the entirety of Section I. If you consider that it applies only to the northern part please explain by reference to the wording of the condition. Similarly it appears that the condition applies equally to Section J.

As previously stated, NR has no power to rewrite the deemed planning permission. NR's "position" therefore cannot effect a change in the condition and the Council will require the condition to be complied with.

It is noted that there is a tight programme for works. That would appear to be a circumstance of NR's own making. Your identification of the "key trigger" indicates an intent not to comply with other parts of the condition That would result in a breach of planning control.

Your comments regarding vibration SoA and reports not "explicitly" addressing what is now proposed are noted. They reinforce our earlier comments regarding compliance with the deemed planning permission and EIA Directive compliance. Please either demonstrate that the material provided to the Council does effect compliance with the relevant parts of condition 19 or provide such supplementary or replacement material as will effect such compliance.

Re conditions 31 and 32; we repeat our comments as to the conditions being as imposed upon the deemed planning permission. Again what you propose would appear to constitute a breach of planning control. The "practical significance" or otherwise of a particular breach is likely to be relevant to and decisions concerning enforcement but we can find no "practical significance" limitation in the conditions themselves.

Programme for Decision on the Noise and Vibration SoAs

There is nothing to add beyond what has been said above.

Matters for the City Council to Confirm

The City Council is not content with the approach proposed in your letter.

- (i) It does not accept the proposed intention as set out.
- (ii) It is not reasonable and acceptable to the City Council (or lawful) to effect the relaxation proposed.

The City Council would request that NR effects compliance with the deemed planning permission including the conditions.

Yours faithfully,

Michael Morgan  
Lawyer  
for Head of Law and Governance.